

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Sam Wells,

Plaintiffs,

V.

COMPLAINT

**CBS Marketing Solutions, Inc. and
Amanda Marcengill,**

Defendants.

Plaintiff, through his attorney, would show as follows:

1. Plaintiff was employed by Defendant CBS Marketing Solutions (“CMS”) in Greer, South Carolina.
2. CMS is a South Carolina corporation with a principal place of business in Greer, South Carolina.
3. CMS is sponsor of a welfare benefit plan (“Plan”) for CMS employees.
4. Plaintiff was a participant in the Plan, and he covered his wife in children as participants based on his employment with CMS.
5. Defendant Marcengill is CMS’ sales manager.
6. Plaintiff has a serious health condition, which requires extensive treatment and medical care.
7. Defendants were aware of Plaintiff’s medical condition and of the costs incurred by the Plan to treat Plaintiff.

8. In October 2022, Marcengill repeatedly asked Plaintiff to remove himself and his family as participants in the Plan because of the costs that have been and would be incurred by the Plan because of Plaintiff's serious medical condition.

9. After Plaintiff declined to remove himself and his family from the Plan, Marcengill began taking steps to terminate Plaintiff's employment.

10. Defendants terminated Plaintiff's employment after he continued to incur expenses covered by the Plan and knowing that Plaintiff likely would be incurring large expenses in the future, including possibly a very expensive surgery.

11. Defendants acted with the specific intent of removing Plaintiff and his family as participants of the Plan because of the expenses incurred by Plaintiff.

Count I¹
For a First Cause of Action
ERISA Section 510
Interference and Retaliation

12. Plaintiff incorporates by reference the foregoing allegations as if set forth here in full.

13. Section 510 of ERISA specifically identifies discrimination, expelling, and termination of employment as prohibited conduct. 29 U.S.C. § 1140 ("Section 510").

14. Defendant Marcengill is a "person" under Section 510, as is Defendant CMS.

¹ Concurrent with the filing of this Action, Plaintiff is filing a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") under the Americans with Disabilities Act ("ADA"). Upon either the receipt of a Right to Sue notice, or upon Plaintiff's entitlement thereto (whichever is earlier), Plaintiff intends to amend this action to include ADA claims.

15. Defendants discriminated against Plaintiff, expelled Plaintiff from the Plan, and terminated Plaintiffs' employment with CMS.

16. Defendants discriminated against Plaintiff, expelled him, and terminated his employment for the purpose of interfering with Plaintiff's attainment of rights to which he is entitled under the Plan

17. Defendants discriminated against Plaintiff, expelled him, and terminated his employment for exercising rights to which he is entitled under the Plan.

18. Plaintiff has been damaged not only by the loss of benefits, but also because of the compensation and other benefits lost from the termination of his employment and costs that will be incurred in trying to cover himself and his family.

Plaintiff requests that he be awarded all relief to which he is entitled including, but not limited to the following: A declaratory judgment that the acts and practices of Defendants complained of herein are in violation of the laws of the United States; injunctive relief; actual/make whole relief; lost compensation and benefits; reimbursement for any medical expenses incurred that would have been covered by the Plan; reimbursement for any costs incurred in obtaining coverage or alternate coverage above and beyond any employee portion of premiums due under the Plan for employed participants; attorney fees, expenses, and costs; pre- and post-judgment interest; and all other and further relief as to this Court appears necessary and proper including, but not limited to, equitable relief to compensate Plaintiffs.

Respectfully submitted this 13th day of January 2023.

s/ Brian P. Murphy

Brian P. Murphy, Fed. I.D. No. 6405

Attorney for Plaintiff.

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